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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,174	04/22/2004	Carter W. McGuyer	33101-2321	6049

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KRAMER LEVIN NAFTALIS & FRANKEL LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
1177 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

EXAMINER
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CARTAGENA, MELVIN A

ART UNIT	PAPER NUMBER
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3754

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/829,174

Applicant(s)

MCGUYER, CARTER W.

Examiner

Melvin A. Cartagena

Art Unit

3754

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-13, 15-18 and 20 is/are rejected.
- 7) ☒ Claim(s) 4, 14 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11142005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

1. Claim 4 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The dependency of claim 4 needs to be corrected.

In light of the above informalities, the claims have been examined as could best be understood by the examiner. The examiner's failure to apply prior art to any of the claims should not be construed as an indication of allowable subject matter.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6 and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US 1,204,111 to Anderson.

Anderson shows a dispenser for particle material as seen in Figs. 1, 2 and 4, having an elongated tubular body 5, a top structure 47 closing one end of the body, a bottom structure 2 defining an outlet 13 for dispensing pre-measured amounts of material and supporting the body, the bottom structure including a rotor 16 with a frustro-conical shape, a holding structure 27 defining a plurality of holding compartments 39 of a shape matching the outlet and coupled to the rotor 16 by shaft section 23, 24 and 25, a ring member 53 with a plurality of detents, a ring-

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shaped spring 30 fitted into the detents as the ring member rotates, see page 2, lines 115-121, the ring rotation prevented in one direction by element 31.

With respect to the spring making a "click" as the spring snaps into each recess, this is an inherent property of the spring and ring member arrangement, as the spring snaps into a recess, a click is generated.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by US 1,944,447 to McVicker.

McVicker shows a dispenser as seen in Figs. 1 and 2, having a tubular body 1, a screw on top structure 3 closing one end of the body, a bottom structure 4 defining an outlet 7 for selectively dispense pre-measured quantities of material and supporting the body, the bottom structure including a holding structure 12 with a plurality of holding compartments 24 and a cylindrical rotor drivable couple with the compartments, see line 111-116.

5. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by US 2,484,148 to Beatty et al.

Beatty shows a dispenser as seen in Figs. 2 and 3, having a housing body 5, a pouring structure 12 with a slider portion 14 that fits into top part 8 and is slidable towards and away of the body in the open position, see Fig. 3, an dispensing opening 15 in the slider portion.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 7, 16-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 1,944,447 to McVicker in view of US 2,484,148 to Beatty et al.

McVicker shows all claimed features as discussed above except for the top having a slider closure. Beatty shows a condiment dispenser with a structure 12 with a slider portion 14 that fits into top part 8 and slides to open and close the top. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to substitute the closure of McVicker with a slidable closure structure ready available in the market to facilitate filling of the container without having to make any additional modifications as taught by Beatty. See column 1, lines 15-21.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 1,204,111 to Anderson in view of US 4,183,443 to DeParales et al.

Anderson shows all claimed features as discussed above except for an outlet cover that rotates on the longitudinal axis of the container. DeParales shows a cover 39 closing an outlet opening defined by edges 35, 36 and 37. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the device of Anderson to include an outlet cover to prevent contamination of the outlet opening when not in use as taught by DeParales.

***Allowable Subject Matter***

9. Claims 14 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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*Conclusion*


10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lang shows a shaker. Page shows a dispensing device. Brochu shows a toothpaste dispenser. Wentorf shows a dispenser. Katz shows a powder material dispenser.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on T-F (7:30AM to 6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NIAC 3/14/07  
MAC

  
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